

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HONG WANG,)	
)	Case No. 2:16-cv-1182
Plaintiff,)	
)	Judge Watson
v.)	
)	Magistrate Judge Deavers
PRESIDENT BARACK OBAMA, et al.)	
)	
Defendants.)	

FEDERAL DEFENDANTS' MOTION TO DISMISS

The Federal Defendants move under Federal Rule of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6) to dismiss Plaintiff Hong Wang's complaint. The following memorandum of law contains the grounds for this motion.

Respectfully submitted,

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MEMORANDUM OF LAW

Plaintiff Hong Wang brings this action requesting a judicial order against Senator Mitch McConnell, Speaker Paul Ryan, and a host of additional federal agencies and high-level federal officials including former President Barack Obama. Wang allegedly delivered a request to the Federal Defendants to do an “investigation related two [sic] major presidential candidates.” (*Compl.* ECF No. 1., PgId. 4.) Wang then follows up with the phrase, “[a]ccessory to Murder investigation on Hillary Clinton and State Department.” (*Id.*) Wang alleges that “Clinton and State Department knew Genocide in China and hide the information submitted by wang lijun to US Embassy in China in 2012.” (*Id.* ¶ A; PgId. 5.) Wang also asserts that “Defendant Department of Justice did not explain why Donald Trump action to Muslim through entire election did not violate Hate Crime of US Law.” (*Id.* ¶ B; PgId. 5.) Wang alleges that the Department of Justice “did not explain, based on report, why Donald Trump NJ tower Rich Chinese EB5 urgent approved due to Hurricane Sandy with support of Obama did not violate any US law.” (*Id.* ¶ C; PgId. 5.)

Wang further asserts that he did not receive any responses regarding his concerns about Ivanka Trump’s “best friend Wendi Deng, a top Chinese Spy.” (*Id.* ¶ D; PgId. 5.) Wang alleges that Trump used Chairman Mao’s method of consolidating power, which Wang calls “using the rural areas to encircle the cities’ using cheating, hate, etc.” (*Id.*) Wang continues, “[t]hus Plaintiff think Chinese Communist Party interfere with US election by using Wendi Deng as spy.” (*Id.*)

Wang concludes “Plaintiff thus cannot and did not vote. It violated plaintiff’s right given by constitution and federal law.” (*Id.*)

Wang seeks a court order compelling former President Obama, former Vice President Joe Biden, Speaker Ryan, and Senator McConnell to “cooperated (sic) and monitor” the remaining defendants in releasing various explanations, email, and information from alleged investigations. (*Id.* at ¶¶ 1–6; PgId. 6.)

The Court should dismiss Wang’s complaint for many reasons. First, Wang’s disjointed allegations are so insubstantial and implausible as to deprive the Court of subject matter jurisdiction to consider his action. *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) (affirming that “a district court may, at any time, sua sponte dismiss a complaint for lack of subject matter jurisdiction . . . when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion” in dismissing complaint against United States Senator “and other top government officials, claiming that the defendants violated plaintiff’s First Amendment right to petition the government because they did not answer plaintiff’s many letters or take the action requested in those letters”). Wang puts forth a list of grievances against the Federal Defendants that is both rambling and incoherent. The Court should dismiss Wang’s complaint for lack of subject matter jurisdiction on the grounds that the complaint is frivolous and devoid of merit.

Second, Wang lacks Article III standing to sue the Federal Defendants because his generalized claims that the defendants failed to investigate his personal grievances do not establish a case or controversy. They do not allege an injury-in-

fact for purposes of Article III. “[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–74 (1992); *see also Jones v. Salt River Pima-Maricopa Indian Cmty*, 211 F. App’x 646 (9th Cir. 2006) (affirming dismissal for lack of Article III standing of claims against Senators that enactment of laws violated plaintiff’s constitutional rights); *Berg v. Obama*, 586 F.3d 234, 237, 240 (3d Cir. 2009) (holding that Plaintiff’s “grab bag of claims” failed to establish standing and stated, “[e]ven if we assume that the placement of an ineligible candidate on the presidential ballot harmed Berg, that injury, including *any frustration Berg felt because others refused to act on his view of the law, was too general for the purposes of Article III . . .*”) (emphasis added). Nor is any alleged injury traceable to, or redressable by, Senator McConnell, Speaker Ryan or any of the other Federal Defendants. *Hoffman v. Jeffords*, 175 F. Supp. 2d 49, 54, 57-60 (D.D.C. 2001), *aff’d*, 2002 WL 1364311, *1 (D.C. Cir. May 6, 2002) (summarily affirming judgment that plaintiff’s claimed legislative injuries arising out of Senator’s party switch were not “personal, actual, traceable to [Senator’s] conduct, or likely to be redressed by a favorable decision”); *Harrington v. Bush*, 553 F.2d 190, 213 (D.C. Cir. 1977) (citing *Laird v. Tatum*, 408 U.S. 1, 14, 92 S. Ct. 2318, 33 L. Ed. 2d 154 (1972) (“To constitute injury in fact, the alleged harm must be ‘specific . . . and objective’; appellant’s claims regarding effectiveness are neither.”))

Third, Wang's complaint against Senator McConnell, who represents Kentucky, and Speaker Ryan, who represents Wisconsin, is also subject to dismissal for lack of personal jurisdiction because both the Senator and the Speaker lack the requisite minimum contacts with Ohio to subject either of them to suit here. *E.g., Liberation News Serv. v. Eastland*, 426 F.2d 1379, 1384–85 (2d Cir. 1970) (affirming dismissal of suit against United States Senators for lack of personal jurisdiction); *Subramaniam v. Beal*, 2013 WL 5462339, at *3 (D. Or. Sept. 27, 2013) (dismissal for lack of personal jurisdiction of action against former Texas Senator Gramm for conduct arising out of the performance of official duties); *Wade v. Akaka*, 2012 WL 6115656, at *4 (S.D. Tex. Nov. 2, 2012) (recommending dismissal for lack of personal jurisdiction of complaint alleging that Senators not elected from forum state failed to take official action in response to plaintiff's request), *adopted by*, 2012 WL 6115056 (S.D. Tex. Dec. 10, 2012). And if Wang is suing any of the other Federal Defendants in their individual capacity besides Senator McConnell and Speaker Ryan, which is unclear, he is unable to establish personal jurisdiction because he has not shown that the "minimum contacts" test is met with this forum.¹

Fourth, Wang has also failed to perfect service on many of the Federal Defendants. The Court's docket indicates that as of the date of this filing Wang has failed to perfect service to former President Barack Obama, former Vice President

¹ The minimum-contacts requirement means that a defendant must "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958) (citing *International Shoe Co. v. State of Washington*, 326 U.S. 310, 319 (1945)).

Joe Biden, former Secretary of State John Kerry, former Secretary of Homeland Security Jeh Johnson, the Department of Homeland Security, the Central Intelligence Agency, House Speaker Paul Ryan, or Senator Mitch McConnell.

Fifth, because Wang's claims against the Senator and Speaker Ryan arise out of the exercise of a legislative function, they are barred by the Speech or Debate Clause, art. I, sec. 6, cl. 1, of the Constitution, which affords Members of Congress an absolute immunity from damages, injunctions, and declaratory judgments for all matters arising out of the their "participat[ion by Members] in committee and House proceedings with respect to . . . matters which the Constitution places within the jurisdiction of either House." *Gravel v. United States*, 408 U.S. 606, 625 (1972). Conducting investigations, convening hearings, and passing legislation are quintessential legislative functions. *See Watkins v. United States*, 354 U.S. 178, 187 (1957) ("The power of the Congress to conduct investigations is inherent in the legislative process."); *Johnson v. Reagan*, 524 F.2d 1123, 1124-35 (9th Cir. 1975) (affirming legislative immunity dismissal of action alleging that legislators were "permitting" state agency to deny plaintiff's parole); *Yeldell v. Cooper Green Hosp., Inc.*, 956 F.2d 1056 (11th Cir. 1992) (holding that legislative immunity barred claim against legislators for failing to take legislative action to assist plaintiff).

Finally, Wang's claims easily fail on the merits. As to his claims against members of Congress, to counsel's knowledge no court, under any theory of liability, has ever recognized a cause of action against a Member of Congress for taking, or failing to take, legislative action to a citizen's satisfaction. *See Apple*, 183 F.3d at 479 (affirming sua sponte dismissal against Senator and other government officials,

stating that “[a] citizen’s right to petition the government does not guarantee a response to the petition or the right to compel government officials to act on or adopt a citizen’s views”); *Newell v. Brown*, 981 F.2d 880, 887 (6th Cir. 1992) (affirming dismissal of constitutional claim, stating “[f]or the federal judiciary to subject members of Congress to liability for simply doing their jobs would be unthinkable”); *Richards v. Harper*, 864 F.2d 85, 88 (9th Cir. 1988) (affirming dismissal of pro se action because legislators’ failure to assist constituent was “neither inappropriate nor actionable”); *De Masi v. Schumer*, 608 F. Supp. 2d 516, 525 n.12 (S.D.N.Y. 2009) (same, collecting cases); *Adams v. Richardson*, 871 F. Supp. 43, 45 (D.D.C. 1994) (“Plaintiff has no constitutional right to have [the] Congressman . . . make particular decisions or take particular actions.”).

The same is true for the Executive Branch officials and agencies. Wang is not entitled to any judicial directive that requires a federal agency to investigate the matters he personally feels are important. *Greer v. Chao*, 492 F.3d 962 (8th Cir. 2007) (citing *Giacobbi v. Biermann*, 780 F. Supp. 33 (D.D.C. 1992), *aff’d*, No. 92-5095, 1992 WL 309042 (D.C. Cir. Oct. 6, 1992) (“[T]he manner in which an agency opts to investigate a complaint is largely a matter left to the agency’s discretion: ‘Deciding which claims are facially without merit, which claims merit investigation, and the level of investigation desirable, are all enforcement-related decisions.’”); *see also Heckler v. Chaney*, 470 U.S. 821, 838 (1985) (holding that an agency’s decision whether to institute investigative or enforcement proceedings is committed to its absolute discretion as a matter of law unless Congress has indicated otherwise).

For the foregoing reasons, the Court should dismiss Wang's complaint as to all Federal Defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 7, 2017, I electronically filed the foregoing Federal Defendants' Motion to Dismiss using the CM/ECF system, and that on the same date I served this motion to Hong Wang by Federal Express to 3505 Prestwick Ct. Columbus, OH 43220.

s/John J. Stark
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